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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CRAIG M. BALL,

11 Plaintiff,

12 v.

13 MANALTO, INC., a Virginia corporation, and
14 ANTHONY OWEN, an individual,

15 Defendants.

Case No. C16-1523RSM

ORDER DENYING MOTION TO
CONTINUE TRIAL DATE

16 This matter comes before the Court on Defendants Manalto, Inc. and Anthony Owen's
17 Motion to Continue Trial Date. Dkt. #33. Trial is currently set in this matter for October 23,
18 2017. Dkt. #12. The discovery motion deadline is May 26, 2017, the discovery cut-off is June
19 26, 2017, and the dispositive motion deadline is July 25, 2017. *Id.* Defendants are represented
20 by two named counsel in this matter, attorneys Daniel Thieme and Kellie Tabor. *See* Docket.
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22 Defendants bring this Motion to request a four-month continuance of the trial date to
23 accommodate the scheduled leave of one of their counsel. Ms. Tabor is pregnant with a due
24 date of October 23, 2017. Dkt. #34 at ¶6. Ms. Tabor is currently a "shareholder" at the firm
25 Littler Mendelson, but began this case as a "senior associate." *Id.* at ¶ 4. Littler Mendelson's
26 policy requires a shareholder to appear on all of the pleadings and to supervise the case. *Id.*
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1 Shareholder Dan Thieme agreed to serve in that capacity. *Id.* According to the declaration of
2 Ms. Tabor, “Defendants selected me specifically to be their attorney in this case.” *Id.* at ¶ 2.
3 Defendants do not submit any further evidence to support this assertion. Defendants argue that
4 good cause exists to continue the trial date by four months because “lead trial counsel for
5 Defendants recently learned that the birth of her child will conflict with the currently scheduled
6 trial date, and thus she will be unavailable for the currently-set trial date.” Dkt. #33 at 4.
7 Defendants argue that Plaintiff will not be prejudiced by this continuance because this request is
8 not being made on the eve of trial. *Id.* at 5. Defendants argue that “[r]efusing a continuance for
9 the birth of a child would be contrary to Washington State’s public policy against pregnancy
10 and sex discrimination.” *Id.* at 6 (citing RCW 49.60.010). Defendants discuss current issues
11 surrounding pregnancy in the legal profession. *Id.* at 6-7. Defendants argue that “[r]efusing a
12 short continuance for the birth of a child (both medical incapacity associated childbirth and
13 critical bonding time with a new baby) communicates to female litigators that they either need
14 to choose not to have children, or that they need to stop litigating for the years in which they
15 desire to have a child.” *Id.* at 7.

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19 Plaintiff Ball first responds by suggesting that the trial date be moved to an earlier date
20 with the deadline for filing dispositive motions moved up to “the day after the [current]
21 discovery cutoff.” Dkt. #36 at 3. Plaintiff argues that continuing trial for four months would
22 cause him financial hardship. Dkt. # 36 at 5. Plaintiff states through his personal declaration
23 that he is currently unemployed and looking for work, and that a delay in the resolution of this
24 case will affect his family’s financial affairs. Dkt. #38. Plaintiff next points out several holes in
25 Defendants’ reasons to request this continuance. First, that Defendants have two named counsel
26 who should be prepared to go to trial. Dkt. #36 at 6-7. Second, that Defendants selected a law
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1 firm with other counsel who can be brought up to speed in this matter prior to trial. *Id.* at 7-8.
2 Third, that if Ms. Tabor's "personal participation is necessary for trial preparation, a trial date of
3 October 23, 2017 would afford a *greater* opportunity for her use any knowledge unique to her
4 to prepare the case for trial than Defendants' requested date of sometime in March." *Id.* at 8
5 (emphasis in original). Fourth, that Defendants' assertion that they specifically selected Ms.
6 Tabor for this case is only supported by a single sentence in Ms. Tabor's declaration, is not
7 supported by a declaration from Defendants, and that in any case the individual currently
8 directing counsel on behalf of Manalto, Inc. was not the person who selected Defendants'
9 counsel. *Id.* at 8 (citing Dkts. #37-7). The Court notes that Plaintiff makes a point of stating
10 that "all pregnancies deserve to be celebrated" and that "no lawyer should have her career
11 derailed by her pregnancy." *Id.* at 1.

14 On Reply, Defendants argue that advancing trial to September will prejudice Defendants
15 ability to adequately prepare and defend their case and would "deprive Defendants of the
16 benefit of the Court's standard case schedule, which typically allows parties a full month
17 between the close of discovery and the dispositive motions filing deadline..." Dkt. #41 at 2-3.
18 Defendants spend the majority of their brief attacking Plaintiff Ball's claims of financial
19 hardship due to unemployment and argue that he has failed to mitigate his damages. *Id.* at 4-5.
20 Defendants go so far as to insinuate that Plaintiff cannot claim financial hardship because he
21 resides in a neighborhood "widely acknowledged as 'one of the most affluent communities in
22 metro Seattle,'" with a median home value of \$2,298,400 and average rental cost of \$7,814 per
23 month. *Id.* at 5 (citing The Seattle Times and Zillow website). Defendants do not reply to
24 Plaintiff's argument that the proposed continuance would cause Ms. Tabor to be absent from
25 trial preparations or argument that the person currently directing counsel on behalf of Manalto
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1 was not the person who selected Ms. Tabor. Defendants do not attach a client declaration to
2 support their assertion that they selected Ms. Tabor for this case.

3 The Court begins by expressing its dismay that the parties could not come together and
4 propose an agreed rescheduling of the trial date. As a result, this Motion has required the Court
5 and the parties to wade into the private affairs of Ms. Tabor and, surprisingly, Mr. Ball, to an
6 extent that strikes the Court as unnecessary and inappropriate.

8 Mr. Ball's request to move the trial to September can easily be denied. The Court will
9 not prejudice Defendants by shortening their time to prepare for trial, and setting a dispositive
10 motion deadline one day after the discovery cutoff is illogical for the reasons stated in
11 Defendants' Reply brief.

13 The Court next turns to Defendants' proposed continuance. The Court is only interested
14 in the basis or bases Defendants put forth to constitute good cause under Rule 16(b)(4).
15 Defendants do not submit any evidence that either Manalto the company or Anthony Owen the
16 individual have a conflict with the existing trial date. The only basis for continuance is the
17 conflict with the leave schedule of one of Defendants' attorneys. There have been two attorney
18 names attached to each and every pleading and brief filed by Defendants. From the Court's
19 perspective, there is no reason to believe that Mr. Thieme is not fully capable of representing
20 Defendants, even if he has spent less time than Ms. Tabor working on this case.

22 Defendants' strongest argument is that they specifically selected Ms. Tabor for this case.
23 However, the Court finds that Defendants have failed to put forth meaningful evidence that they
24 selected Ms. Tabor, and the Court is persuaded by Plaintiff's un rebutted argument that the
25 individuals who could have selected Ms. Tabor no longer work for Defendant Manalto.
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1 The Court is also not convinced that Defendants will suffer harm unless the continuance
2 is granted. While pregnancy would almost certainly constitute good cause for a four month
3 continuance if Defendants were represented by a solo practitioner, the Court finds that it does
4 not constitute good cause when Defendants are represented by at least one other named counsel
5 and a firm full of associates that can certainly be brought up to speed on this case. Trial is not
6 set to begin for five more months. Further, the Court agrees with Plaintiff that the existing trial
7 schedule will allow Defendants access to Ms. Tabor's expertise in valuable pretrial
8 preparations, whereas the requested relief might actually deprive Defendants of Ms. Tabor's
9 expertise. Given all of this, Defendants present insufficient evidence of good cause to warrant
10 their requested extension, and the Court denies their request. Therefore, the Court need not
11 address the potential prejudice to Plaintiff, or the tangential question of his alleged failure to
12 mitigate.

15 The accusation that ruling against Defendants "communicates to female litigators that
16 they either need to choose not to have children, or that they need to stop litigating for the years
17 in which they desire to have a child" is offensive at best. *See* Dkt. #33 at 7. The Court fully
18 supports attorneys taking maternity and paternity leave, but such leave alone cannot constitute
19 good cause without a connection to the parties supported by evidence. The Court has made its
20 decision based on the evidence, or lack thereof, showing how this continuance would impact the
21 parties, not their counsel. The needs of the parties and the Court's responsibility "to secure the
22 just, speedy and inexpensive determination of every action and proceeding" take priority over
23 the schedule of one counsel for one party. *See* Fed. R. Civ. P. 1.

1 Having reviewed the relevant briefing, the declarations and exhibits attached thereto,
2 and the remainder of the record, the Court hereby finds and ORDERS that Defendants' Motion
3 to Continue, Dkt. #33, is DENIED.
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5 DATED this 16 day of May, 2017.
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9 RICARDO S. MARTINEZ
10 CHIEF UNITED STATES DISTRICT JUDGE
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